

**STANDARD OPERATING PROCEDURE (SOP) regarding
Appearance of Government Officials in Court Proceedings/Contempt proceedings in
Government matters**

PURPOSE

To provide a SOP for appearance of Government officials, in their official capacity, in court proceedings/hearing and/or contempt proceedings involving /against government.

SCOPE

This SOP would be applicable to all court proceedings of government-related matters before the Hon'ble Supreme Court, High Courts and all other courts that are hearing matters under their respective appellate and/or original jurisdiction (writ petitions, PIL etc.) or proceedings related to contempt of court.

OUTCOME

- This SOP aims to create a more congenial and conducive environment between Judiciary and Government with a view to improve overall quality of compliance of Judicial orders by the Government, thereby minimizing scope for contempt of court.
- Address issues related to appearance of Government officials in Government matters in courts.
- This SOP would contribute significantly to saving of time and resources of both the court and the government by allowing for appearance of the concerned official through VC.

SUGGESTED POINTS OF ACTION

I. Personal Appearance of Government Official in court proceedings:

In case of proceedings related to government matters wherein the personal appearance of government official is involved, the following submission may be considered:

- i. As per directions of the Supreme Court, the in-person appearance of govt. officials should be called for only in exceptional cases and not as a matter of routine. Courts

should practice necessary restraint while summoning the government officials during hearing of cases (writs, PILs etc.) including contempt cases.^{1 2 3}

- ii. In exceptional circumstances wherein there is no option other than the concerned government official to be present in person in the court, **due notice for in-person appearance**, giving sufficient time for such appearance, must be served in advance to such official.

- iii. Howsoever, in exceptional cases too wherein in-person appearance of government official is still called for by the court, the **court should allow as a first option, to appear before it through VC (video conference)**. The Invitation Link of VC for appearance and viewing, as the case may be, can be sent by the Registry to the given mobile no(s)/e-mail id(s) by SMS/email/WhatsApp of the concerned official at least one day before the scheduled hearing.

- iv. **Appearance of government official in cases as pro forma party should be avoided.** Cases under consideration of the court wherein the lead Ministry/Department directly connected to the matter and representing on behalf of Government in the court has filed a common reply/representation, the appearance of government officials or filing of a separate affidavit from Ministry/Department listed as *pro forma* should not be insisted upon by the courts. As such, the same should apply in case of contempt proceedings too wherein in-person appearance notices are issued to all government respondents, including *pro forma* parties.

- v. **Comments on the dress/physical appearance/educational and social background of the government official** appearing before of the Court should be refrained. Government officials are not officers of the court and there should be no objection to their appearing in a decent work dress unless such appearance is unprofessional or unbecoming of her/his position.⁴

¹ *State of U.P. and Ors. v. Prahalad Singh and Ors.* (24.02.2023 - SC Order) (Civil Appeal No. -2023 (Arising Out of Slp(C) No. 21197-2022) wherein the court observed “*This Court has repeatedly held that while it is open to the High court to come to any conclusion on the basis of the pleadings and materials available on record, it is not open to the Court to summon the appearance of the officials at the drop of the hat.*”

² *The State of Uttar Pradesh and Ors. v. Manoj Kumar Sharma* (2021) 7 SCC 806 wherein the court observed “*we feel, it is time to reiterate that public officers should not be called to court unnecessarily. The dignity and majesty of the Court is not enhanced when an officer is called to court....If any particular issue arises for consideration before the Court and the Advocate representing the State is not able to answer, it is advised to write such doubt in the order and give time to the State or its officers to respond...*”

³ *Divisional Manager, Aravali Golf Club and Ors. v. Chander Hass and Ors.* (2008) 1 SCC 683 wherein the court observed: “*..Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like Emperors. There is broad separation of powers under the Constitution and each organ of the State...*”

⁴ (i) Instance of hearing before Patna HC wherein officer in question was Principal Secretary for Housing and Urban Development in the state. He was dressed in a formal white shirt and trousers for the hearing but was

II. In matters related to orders passed by Government Official/authority exercising quasi-judicial powers:

- i. Wherever the proceedings relate to an official/authority that has been conferred the status of a court on it by stipulating that proceedings before the authority shall be judicial/court proceedings and ordinarily order/judgments passed in such proceedings are considered as order and judgments passed by a court,⁵ therefore, while determining such order/judgement in appeal, **the court hearing such appeal must limit its determination to only the legality of the order** and as such facts already considered by the government official/authority need not be considered afresh by the court.
- ii. As the determination of an appeal is a mixed question of the law and fact, the court hearing such appeal is open to examination of substantive facts that were not considered by such official/authority and refer the same back to the official with relevant directions. However, calling for personal appearance and/or frequent in-person attendance of such official before the court during regular hearing of the appeal is not necessitated in such a scenario and may be avoided by the presiding judge/judicial officer.⁶

III. In case of contempt/contempt proceedings:

- i. It is already a settled position that for a contempt action to lie, it is necessary for the parent order to be an enforceable order. Therefore, compliance should not be insisted upon by court directing a particular outcome, especially on matters in the executive domain.
- ii. No contempt should be initiated in case of statements made in court by government counsels that is contrary to the stand of the Government affirmed through its affidavit/written statement or reply submitted before the court. It is already established case law that an undertaking that is contrary to statutory provisions cannot be the basis for contempt proceedings.⁷ Similarly, in case of criminal contempt, court should hesitate to punish a contemnor if the act or omission complained of was not willful.⁸

reprimanded for appearing in court in "inappropriate attire". The judge further asked if he had attended the civil service training institute in Mussoorie and if they had not told him "how to appear in court".

(ii) Instance of personal remarks by Presiding Officer of Special Court, CBI on the social background of government official being examined as witness in the Bihar Animal Husbandry scam.

⁵ *K. Shamrao v. Assistant Charity Commissioner* (2003) 2 SCC 563 wherein the court stated that the Assistant Charity Commissioner possessed all the attributes of a court.

⁶ *Pintoo Kumar Singh v. The Union Of India Through Its Secretary Home Department, New Delhi, Mr. Rajiv Gauba and Ors* (Contempt Case No. 2326 of 2018 in Civil Writ Jurisdiction Case No.4547 of 2017)

⁷ *Chhaganbhai Norsinbhai v. Soni Chandubhai Gordhanbhai* (1976) 2 SCC 951.

⁸ *S. Abdul Karim, Appellant v. M.K. Prakash and Ors.* (1976) CriLJ 641 ; *D.C. Saxena v. Hon'ble the Chief Justice of India* (1996) 5 SCC 216 ; *Rajendra Sail v. M.P. High Court Bar Association* (2005) 6 SCC 109.

- iii. Before initiation of contempt proceedings, prayer for review petition on behalf of government may be entertained by higher courts wherein it is prayed that substantive law points have not been considered by the court during adjudication of the matter.
- iv. In cases wherein a review petition has been admitted against a contempt order of a lower court OR in case of High Court, a Letter Patent Appeal(LPA) has been preferred and admitted to a higher Bench OR in case of Supreme Court, a Special Leave Petition (SLP) has been admitted, as the case may be, the lower court should take cognizance of the same and **not initiate any related contempt proceedings in the instant matter.** In cases wherein contempt proceedings have already been initiated, the same may be directed to be kept in abeyance at the level of the lower court until the decision/outcome in review or appeal has been pronounced.
- v. **Judge should not, ideally, sit on contempt proceedings relating to their own orders.** It is an established principle of natural justice that no person can judge a case in which they have an interest or in other words be a judge in their own cause (based on legal maxim “*nemo iudex in sua causa*”). Further, as per Section 14(2) of the Contempt of Court Act, 1971, in case of a person charged with contempt in Supreme Court or a High Court ; such person can request to have the charge against him tried by some other judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed.⁹

IV. Cases before the court involving policy matters:

- i. In case of matters being heard by the court **involving issues that are within the exclusive domain of executive** and the same can be resolved only through an executive/administration-related decision, then the court instead of taking up such matter for adjudication and/or call for appearance of government official related therewith, may refer the same to the executive for further necessary action.
- ii. **In case of matters before court involving public policy having wider implication** not only for the Central Government but for the States and other stakeholders as well, it may be recommended to exercise caution to settle the point of law *in rem* before pronouncing the decision on the individual representation.
- iii. In case of matters before court that involve setting up of a committee for further examination of the matter under consideration, the court may prescribe only the broad composition/domains of members/chairperson of such committee instead of naming individual members and leave the identification/selection/appointment of individual members/chairperson with the executive/administration.

⁹ In *Sukhdev Singh Sodhi v. The Chief Justice and Judges of the PEPSU High Court* (1954) SCR 454, the Supreme Court had suggested that it was “desirable on general principles of justice” that a judge who had been personally attacked should not hear the contempt matter which, to that extent, concerned him personally.

V. Time period for compliance of judicial orders involving policy matters:

- i. Compliance of judicial orders involving complex policy matters require various levels of decision-making and/or approvals including approvals from Minister/Cabinet and inter-Departmental consultations to gauge its wider implications.
- ii. In case of such matters being heard by the court, it may take into consideration the above stated aspects and actions based on submissions made on behalf of the government, before contemplating affixing some specific timelines for compliance of its orders.
- iii. **Court to allow for reasonable timeframe, as requested by Govt.** : In case an order has already been passed and the timeframe stated in the judicial order is requested to be revised on behalf of the government, the court may allow for a revised reasonable timeframe for compliance of such judicial orders and allow for hearing of such requests of modification.
